

IN THE COURT OF HAQ NAWAZ,
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 23/13 OF 2026
DATE OF INSTITUTION : 18.05.2026
DATE OF DECISION : 28.09.2026

KHIAL SHAH S/O ANWAR SHAH, CASTE MISHTI, TAPA HAIDER
KHEL, ALI KHAN NAWASI R/O ALWARA MELA KHRASHA
BANDA, DISTRICT HANGU AND OTHERS

..... (APPELLANTS)

-VERSUS-

PROVINCIAL GOVERNMENT AND OTHERS

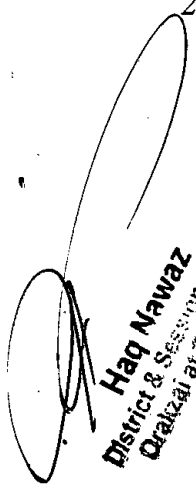
..... (RESPONDENTS)

JUDGEMENT

28.09.2026

This civil appeal was preferred against the judgment and decree dated 30.03.2026 passed by the Court of Senior Civil Judge, Orakzai, whereby Civil Suit No. 57/1 of 2024 was dismissed.

2. The suit was brought by the plaintiffs for declaration to the effect that the suit houses at serial No. 1 and 2 and suit properties at serial 'الف' to 'ص' of headnote of the plaint, described with four boundaries, situated at Alwara Mela, Orakzai, were the ownership of predecessor-in-interest of the plaintiffs and proforma defendants No. 24 to 34 namely Hadeeb Shah, who leased it out to predecessor-in-interest of the defendants No. 4 to 7 namely Ali Hassan. They also prayed for permanent and mandatory injunctions to restrain the defendants from causing interference, changing nature of the suit properties and alienating in favour of anyone, raising construction and cutting trees or leasing out the suit property in favour of someone else. They also prayed for possession of the suit land


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from defendants No. 4 to 23 with rendition of account for the last five years in the shape of produce etc. Cancellation of any deed in respect of the suit properties and demolition of any construction raised during pendency of the suit were also sought for.

3. As per averments of the plaint, Hadeeb Shah, predecessor-in-interest of the plaintiffs and proforma defendants, was resident of Mishti, Tapa Haider Khel, Kandi Ali Khan Nawasi, Alwara Mela, Orakzai. He shifted to Moza Khrasha Banda at Hangu for better livelihood and leased out the suit properties to predecessor-in-interest of the defendants No. 4 to 7, who, in his lifetime, used to pay the share of produce to predecessor of the plaintiffs regularly. After his death, the defendants No. 4 and 5 exchanged the property at serial No. 'د' measuring 02 kanals and sold out the house at serial No. 2 of the plaint, constructed by predecessor of the plaintiffs on an area of 10 marlas for looking after of the Grind mills (جندرات), in favour of defendant No. 23 (respondent No. 22) without consent of the plaintiffs and proforma defendants. The defendant No. 23 constructed a house by demolition of old construction. When the plaintiffs approached the defendant No. 23 to refrain from the illegal construction, he referred them to defendants No. 4 and 5, who assured the plaintiffs that the plaintiffs will be compensated against the exchanged property with the landed property of their choice. However, the defendants stopped payment of produce

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since then. Similarly, an area of 01 kanal and 02 marlas at Jrandi Patey was transferred by the defendants No. 4 and 5 in favour of defendants No. 1 and 2 for the construction of Agency Headquarter Hospital at Mishti Mela and thereby obtained jobs for the defendants No. 8 and 9. The house at serial No. 1 was converted into hujra by the defendants No. 4 and 5, who are bent upon to demolish it and construct a mosque thereupon which is against the injunctions of Islam. The plaintiffs have obtained their domicile certificates from District Orakzai on the basis of their ownership of the suit properties. The plaintiffs repeatedly asked the defendants to accept the claim of plaintiffs and refrain from their illegal acts but they refused; therefore, the suit was filed.

The defendants No. 1 to 3 and 4 to 9, 11, 21 and 22 contested the suit by filing their separate written statements. The defendants No. 1 to 3 submitted in their written statement that the property for construction of hospital was acquired from the lawful owners in the year 2010 and no employment was given to defendants No. 8 and 9. The defendants No. 4 to 9, 11, 21 and 22 submitted in their written statement that the suit properties were in possession of the predecessor of defendants No. 4 to 7 as owner of the same, and predecessor of the plaintiffs and proforma defendants was having no concern with it. They further submitted that the property at Jrandi Patey was validly transferred in favour of the defendants No. 1 and 2 and

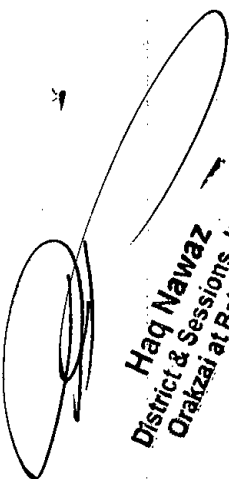
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the defendants No. 8 and 9 were employed in Mishti Mela Hospital in accordance with law. The hujra at serial No. 1 of the plaint was constructed by predecessor-in-interest of the defendants No. 4 to 7. They alleged to have validly exchanged the property with defendant No. 23 in the year 1985. Defendant No. 23 (respondent No. 22) was proceeded against ex-parte whereas the proforma defendants submitted their cognovit in favour of the plaintiffs.

5. Pleadings of the parties were reduced to the following issues;

- I. *Whether the suit is maintainable in its present form, free of legal defects and if the forum is completed to try?*
- II. *Whether plaintiffs and proforma defendants are owners of the suit property?*
- III. *Whether plaintiffs are owners of the suit lands listed in the plaint since the times of their ancestors and are entitled to possession?*
- IV. *Whether defendants No. 04 to 09 are tenants of the plaintiffs and whether they have illegally conveyed title of the suit land through sale and exchange?*
- V. *Whether plaintiffs are entitled to recovery of compensation for default on payments by*



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*their tenants and also for mesne profits from
illegal occupations?*

*VI. Whether suit land was lawfully acquired by
defendants No. 01 to 03?*

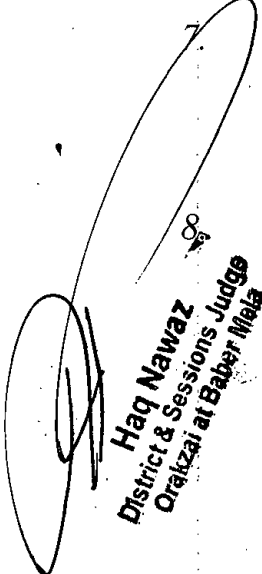
*VII. Whether the plaintiffs are entitled to the relief
as claimed for?*

VIII. Relief.

6. After recording pro and contra evidence and hearing both the parties, the learned trial Court dismissed the suit through his impugned judgement and decree; hence, this appeal was preferred.

7. I have heard learned counsel for the parties and perused the record.

Earlier Civil Suit No. 12/1 of 2020 of the appellants was dismissed by the trial Court on 20.12.2022. A Civil Appeal bearing No. 4/13 of 2023 was allowed by the appellate Court against the said judgment on 10.04.2023 and the case was remanded back to the trial Court for framing additional issues, leading evidence and deciding the case afresh. The appellants subsequently submitted an application for withdrawal of the suit with permission to file a fresh one, which was dismissed by the trial Court on 26.10.2023 but they were permitted by the Court of Additional District Judge-II, Orakzai on 23.12.2023 in


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Civil Misc. Appeal No. 18/14 of 2023 to withdraw their suit and file a fresh one, hence the present suit was filed.

9. The appellants, in order to prove their case, produced Ilyas Khan, Malak Khial Janan and Jameel Khan as PW-1 to PW-3. They deposed that the suit property was the ownership of predecessor-in-interest of the appellants who leased it out in favour of the predecessor-in-interest of the respondents/defendants No. 4 to 7 at the time of his shifting to Hangu for better livelihood. Though in their cross examination the said witnesses shown their ignorance from the exact time of leasing out the suit properties by the predecessor of the appellants in favour of predecessor of the respondents/defendants No. 4 to 7 and payment of produce to the appellants or their predecessor in their presence, but they remained consistent with respect to ownership of the suit properties by the predecessor-in-interest of the appellants.
10. The appellant/plaintiff No. 6, in his statement before the Court as PW-4, produced his CNIC as Ex. PW 4/2 having his address as Caste Mishti, Tapa Haider Khel Alwara Mela, PO Mishti Mela, Tehsil Central, District Orakzai. He also produced the Domicile Certificates of the appellants/plaintiffs as Ex. PW 4/4 having affidavits of numerous elders of the locality including defendant No. 4 that the appellants/plaintiffs have their residential and landed property at Alwara Mela. The respondent/defendant No. 5, in his statement before the Court

as DW-1, admitted the issuance of CNICs and Domicile Certificates to the appellants/plaintiffs from District Orakzai. He further admitted that no domicile certificate is issued to anyone who has no landed property or residence at Orakzai.

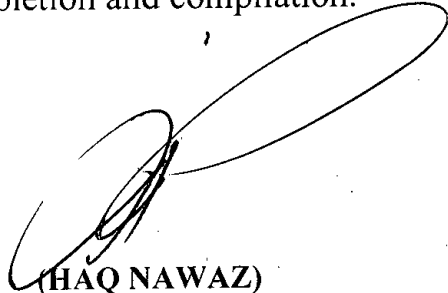
11. On the other hand, the respondents/contesting defendants produced only one private witness before the Court as DW-1. He submitted that the appellants have got no concern with the suit property and it is the ownership of respondents/defendants.

12. Two other witnesses, produced by the respondents, were Senior Clerk Health Department and Record Keeper of the office of the Deputy Commissioner, Orakzai. They appeared before the Court as DW-3 and DW-4 respectively. DW-3 produced an agreement between Assistant Political Agent, Lower Orakzai with owners of the land acquired for the construction of hospital in the year 2010 as Ex. DW 3/2 whereas DW-4 produced a statement of the owners of the land acquired for the construction of hospital at Mishti Mela as Ex. DW 4/2. The perusal of Ex. DW 3/2 shows that it bears the name of respondent/defendant No. 5 (Rehman Gul) for authorisation of one Khial Akbar and Ajmir Khan for receipt of compensation of the acquired land. But the said Rehman Gul, in his statement before the Court as DW-1, did not utter a single word about the contents of Ex. DW 3/2 or his signature on the same. Similarly, Ex. DW 4/2 bears the name of respondent/defendant No. 4 (Safar Gul) as one of the owners of the land acquired for the construction of hospital,

but neither he nor any other signatories of the said document were produced before the Court to endorse the statement of land owners.

13. In view of the above, the appellants remained successful to prove their ownership in respect of the suit properties through preponderance of evidence. The impugned judgment and decree were not based upon correct appreciation of the evidence which are, therefore, set aside. The appeal is allowed and the suit is decreed as prayed for. File of this Court be consigned to record room after its necessary completion and compilation.

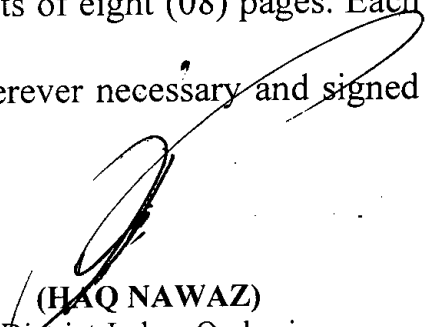
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CERTIFICATE

Certified that this judgment consists of eight (08) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 28.09.2026


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